Remarks

Claims 1-17 and 22-26 remain in the application.

The Examiner has rejected claims 4, 15, and 16 under 35 U.S.C. 102(e) as being anticipated by Johnston (U.S. Patent Application Pub. 2003/0016671 A1). This rejection is improper. Johnston's published application is not prior art to the present application. The Johnston published application is entitled to an effective date as of the filing date of utility application 10/155,488 on May 23, 2002. The present application is entitled to an effective filing date of at least its divisional parent 10/081,396 on February 22, 2002. Therefore, the published application itself is not prior art to the present application. Johnston's provisional application 60/292,875 filed on May 23, 2001 is prior art to the parent utility application but only for what the provisional application contains. Applicants have obtained a copy of Johnston's provisional application and would gladly provide it to the Examiner if requested, but it is assumed that is available online to the Examiner.

Claim 4 has been amended to require the switching be done within an asynchronous network, as supported by the reference to random arrival times at page 3, line 10 and page 24, lines 24, 25.

The Examiner has rejected claims 12 and 13 under 35 U.S.C. 102(b) as being anticipated by Sotom et al. (U.S. Patent 5,896,212, hereafter Sotom). Claim 12 has been amended to more clearly restrict the claims to a switching operation at any of a number of nodes in the network and to require that that switching include selected a switching path to a corresponding one of the other nodes. Sotom's network controller 1 does not conform to the now recited structure and operation. Sotom's controller 1 a unique node in a ring network of different types of nodes and acts to readjust wavelengths dedicated to other nodes both for transmission and reception. The physical transmission paths remain the same before and after Sotom's controller. Accordingly, claim 12 should be allowed.

The Examiner has rejected claims 1, 2, 14, and 15 under 35 U.S.C. 103(a) as being obvious over Sotom in view of IT-T G.262 (ITU5, G.629, "Optical Interfaces for Multichannel

Systems with Optical Amplifiers," October 1998, pp. 14-16. This rejection is traversed. The Examiner is apparently combining ANNEX A for its teaching of the channel allocations in the 1550nm band and ANNEX B for its teaching of the optical supervisory channel (OSC) allocations in including one in the 1310nm band. These two annexes are supplementary to other uncited material. Apart from their physical proximity, there is no suggestion that the 1550nm data band of ANNEX A be combined with the 1310nm OSC of ANNEX B. Applicant deserves to see larger portions of ITU-T G.692 to understand the overall teaching of ITU-T G.692 and for what purposes the two sets of information are summarized in the two annexes.

The Examiner has rejected claims 1, 2, 5, 6, 17, 23-23, and 26 under 35 U.S.C. 103(a) as being obvious over Johnston in view of ITU-T G.692. This rejection is traversed. As mentioned previously, Johnston is improperly cited as prior art and ITU-T G.692 contains no suggestion for using different transmission bands for data and control information.

The Examiner has rejected claim 3 under 35 U.S.C. 103(a) as being obvious over Johnston and ITU-T G.692 and further in view of Mani et al. (U.S. Patent 6,826,164 B2, hereafter Mani) and Rowan et al. (U.S. Patent 6,529,303 B1, hereafter Rowan). This claim depends upon a claim believed to be in allowable form and should therefore also be available. Further, it not believed that the references can be obviously combined with the other art to support the added limitations. Rowan's frequency division multiplexing (FDM) system operates mostly within the electronic regime in combining data channels before finally performing an electro-optical (E/O) conversion at the laser source for the optical link. There is no suggestion by Rowan of separating data in separate first optical wavelengths from control information in a second optical wavelength and combining control information by RF modulation onto a second optical signal. The Mani reference seems to disclose little relevant to the invention. Mani allows the use of an optical WDM network in a cell phone network, but seems to say little more, particularly about routing packets.

The Examiner has rejected claims 7, 9-11, and 24 under 35 U.S.C. 103(a) as being obvious over Sotom and ITU-T G.692 and further in view of Li et al. (B. Li et al., "Low-Loss 1x2 Multimode Interference Wavelength Demultiplexer in Silicon-Germanium Alloy," IEEE

Photonics Technology Letters, vol 11, no. 5, May 1999, hereafter Li). The Sotom and ITU-T G.692 references have been previously discussed. To date, no art has been provided suggesting that the data and control signals be separated into Li's two wavelengths of 1300nm and 1550nm. Furthermore, claim 10 requires that the first and second optical wavelengths are within a single silica transmission band, contrary to Li's teaching that the separated wavelengths are in different bands.

The Examiner has rejected claim 8 under 35 U.S.C. 103(a) as being obvious over Sotom and Li and further in view of Mani and Rowan. As argued before neither Mani nor Rowan are obviously combinable with the WDM packet system of parent claim 7.

In view of the above amendments and remarks, reconsideration and allowance of all claims are respectfully requested. If the Examiner believes that a telephone interview would be helpful, he is invited to contact the undersigned attorney at the listed telephone number, which is on California time.

Respectfully submitted,

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